



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP -9 2015

Carol A. Russell, Treasurer
Tootie Smith for Oregon
89358 Cranberry Lane
Bandon, OR 97411

RE: MUR 6808

Dear Ms. Russell:

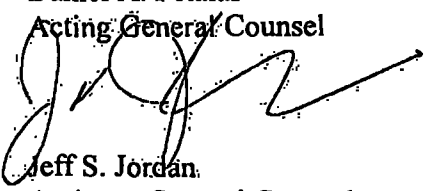
On April 24, 2014, the Federal Election Commission notified Tootie Smith for Oregon and you, in your official capacity as treasurer (the "Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On September 3, 2015, based upon the information contained in the complaint, and information provided by the Committee, the Commission decided to dismiss the allegations that the Committee violated 52 U.S.C. §§ 30118 and 30120, provisions of the Act, and close its file in this matter. Accordingly, the Commission closed its file in this matter on September 3, 2015.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Daniel A. Petalas
Acting General Counsel

BY: 
Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4 **RESPONDENTS:** Tootie Smith for Oregon MUR 6808
5 Carol A. Russell in her official capacity as treasurer
6

7 **I. INTRODUCTION**

8 This matter was generated by a complaint filed with the Federal Election Commission
9 (the "Commission") by Brandon Shackelford ("Shackelford") on April 21, 2014, alleging
10 violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and
11 Commission regulations by Tootie Smith for Oregon and Carol A. Russell in her official
12 capacity as treasurer. For the reasons set forth below, the Commission has chosen to dismiss the
13 allegations that Tootie Smith for Oregon and Carol A. Russell in her official capacity as treasurer
14 violated 52 U.S.C. §§ 30118 and 30120 as a matter of prosecutorial discretion.

15 **II. FACTUAL AND LEGAL ANALYSIS**

16 **A. Factual Background**

17 Complainant alleges that the Committee accepted a corporate contribution in the amount
18 of \$1,000 from Mountain West Investment Corporation ("Mountain West") on January 26, 2014.
19 Compl. at 1. The Complainant notes that the contribution was disclosed on page 7 of the
20 Committee's 2014 April Quarterly Report, filed on April 15, 2014. *Id.*

21 The Complainant also asserts that the Committee violated the Act's disclaimer provisions
22 by distributing yard signs and banners advocating Smith's candidacy without including a "paid
23 for" disclaimer. *Id.* at 3. Attached to the Complaint are two low-definition photographs. *Id.* at
24 5. The first shows a yard sign bearing the slogan "Tootie for Oregon," while the second shows a
25 banner with the same inscription, as well as directing the viewer to "www.TootieSmith.com."
26 *Id.* In neither case is there a visible disclaimer present. *See id.*

1 The Committee acknowledges that it accepted a prohibited corporate contribution and
2 failed to display a proper disclaimer. *See Resp.* at 1. The Committee explains that it realized its
3 error in accepting the corporate contribution the day after the 2014 April Quarterly Report was
4 filed and subsequently returned the contribution. *See Committee's 2014 Amended Pre-Primary*
5 *Report*, filed on May 8, 2014, at 11 (disclosing \$1,000 refund to Mountain West for "corporate
6 contribution").¹ Additionally, the Committee indicates it ordered and then attached tape strips
7 bearing "Paid for by TOOTIE SMITH FOR OREGON Committee" to the signs and banners at
8 issue. *See Resp.* at 1.

9 **B. Legal Analysis**

10 Under the Act, a public communication is "a communication by means of any broadcast,
11 cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass
12 mailing, or telephone bank to the general public, or any other form of general public political
13 advertising." 52 U.S.C. § 30101(22); *see also* 11 C.F.R. § 100.26. Public communications "if
14 paid for and authorized by a candidate, an authorized political committee of a candidate, or its
15 agents" are required to state the communication was paid for by the candidate, committee, or
16 agent in question. 52 U.S.C. § 30120(a)(1); *see also* 11 C.F.R. § 110.11(a)(1). In this case, the
17 Committee admits to violating the provisions of the Act by failing to include the requisite
18 disclaimer on a set of public communications.

19 Federal campaign committees and candidates for federal office are forbidden from
20 knowingly accepting or receiving corporate contributions. 52 U.S.C. § 30118(a); *see also* 11
21 C.F.R. § 114.2. Such contributions include "direct or indirect payment, distribution, loan,

¹ The Response includes an image of a check from the Committee's account, made out to "Mountain West Investment Corporation" in the amount of \$1,000, dated April 16, 2014. *See Resp* at 2. The Response also includes an apparent copy of a letter from Ms. Smith, declining the alleged contribution, addressed to Jason Tokarski at the same address attributed to Mountain West in the Committee's FEC filings. *See Resp.* at 3.

Accordingly, in view of the prompt remedial action taken by Respondents, the Commission has chosen to exercise its prosecutorial discretion, pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), to dismiss the allegations that Tootie Smith for Oregon and Carol A. Russell in her official capacity as treasurer violated 52 U.S.C. §§ 30118 and 30120.